

OCT. 25. 2001 1:14PM

MCCUTCHEN DOYLE PA/6508494800

NO. 7241 P. 1/15

MCCUTCHEN

MCCUTCHEN, DOYLE, BROWN & ENERSEN, LLP

ATTORNEYS AT LAW

3150 Porter Drive
Palo Alto, California 94304-1212
Tel. (650) 849-4400 Fax (650) 849-4800
<http://www.mccutchen.com>

San Francisco
Los Angeles
Walnut Creek

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Fax Cover Page

Please deliver to Art Unit 1648

FAX RECEIVED

OCT 26 2001

GROUP 1600

Date: October 25, 2001

	Name	Fax	Phone
To:	Jeffrey Parkin, Examiner U.S. Patent & Trademark Office Art Unit 1648	(703) 305 3014	(703) 308 2227

From:	Antoinette F. Konski akonski@mdbe.com	(650) 849-4800	(650) 849-4950
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Pages (including this cover page): 15

Subject: Request For Withdrawal of Improper Notice of Abandonment
Serial No.. 08/573,569

Message:

For transmission problems, please call (650) 849-4825

Caution – Confidential

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRANSMITTAL
FORM

(to be used for all correspondence after filing)

Total number of Pages in this submission

15

Application Number	08/573,569
Filing Date	December 14, 1995
First Named Inventor	Hunein F. Maassab et al.
Group Art Unit	1648
Examiner Name	J. Parkin
Attorney Docket No.	UM 2002.01

Commissioner for Patents
Washington, D.C. 20231

ENCLOSURES (check all that apply)

<input type="checkbox"/> FEE TRANSMITTAL FORM <input type="checkbox"/> FEE ATTACHED <input type="checkbox"/> AMENDMENT/RESPONSE <input type="checkbox"/> AFTER FINAL <input type="checkbox"/> AFFIDAVITS' DECLARATION(S) <input type="checkbox"/> EXTENSION OF TIME <input type="checkbox"/> EXPRESS ABANDONMENT REQUEST <input type="checkbox"/> INFORMATION DISCLOSURE STATEMENT W/1449 <input type="checkbox"/> CERTIFIED COPY OF PRIORITY DOCUMENT(S) <input type="checkbox"/> RESPONSE TO MISSING PARTS/ INCOMPLETE APPLICATION <input type="checkbox"/> RESPONSE TO MISSING PARTS UNDER 37 CFR 1.52 OR 1.53 COPY OF PTO-1533	<input type="checkbox"/> ASSIGNMENT PAPERS (FOR AN APPLICATION) <input type="checkbox"/> DRAWING(S) <input type="checkbox"/> LICENSING-RELATED PAPERS <input type="checkbox"/> PETITION ROUTING SLIP (PTO/SB/60) AND ACCOMPANYING PETITION) <input type="checkbox"/> TO CONVERT A PROVISIONAL APPLICATION <input type="checkbox"/> POWER OF ATTORNEY, REVOCATION CHANGE OF CORRESPONDENCE ADDRESS <input type="checkbox"/> TERMINAL DISCLAIMER <input type="checkbox"/> SMALL ENTITY STATEMENT <input type="checkbox"/> REQUEST FOR REFUND	<input type="checkbox"/> AFTER ALLOWANCE COMMUNICATION TO GROUP <input type="checkbox"/> APPEAL COMMUNICATION TO BOARD OF APPEALS AND INTERFERENCES <input type="checkbox"/> APPEAL COMMUNICATION TO GROUP (APPEAL NOTICE, BRIEF, REPLY BRIEF) <input type="checkbox"/> PROPRIETARY INFORMATION <input type="checkbox"/> STATUS LETTER <input checked="" type="checkbox"/> ADDITIONAL ENCLOSURE(S) (PLEASE IDENTIFY BELOW): REQUEST FOR WITHDRAWAL OF IMPROPER NOTICE OF ABANDONMENT; COPY OF NOTICE OF ABANDONMENT FROM PTO DATED 10/10/01; FACSIMILE CONFIRMATION TO PTO DATED 6/25/01 AND RESPONSE TO NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE) AND REQUEST FOR WITHDRAWAL OF NOTICE AND PROVISIONAL PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) AS FAXED 6/25/2001.
<input type="checkbox"/> ISSUE FEE TRANSMITTAL	REMARKS:	

MCCUTCHEN, DOYLE, BROWN & ENERSEN LLP
 THREE EMBARCADERO CENTER, SUITE 1800
 SAN FRANCISCO, CA 94111
 TELEPHONE: (650) 849-4050
 FACSIMILE: (650) 849-4800

DATE: OCTOBER 25, 2001

BY:

ANTOINETTE F. KONSKI (REG. NO. 34,202)

CERTIFICATE OF MAILING BY "FIRST CLASS MAIL"

I hereby certify that this correspondence is being facsimile transmitted to (703) 305-3014 attn: J. Parkin. Examiner: Commissioner for Patents, Washington, D.C. 20231 on this date: OCTOBER 25, 2001.

By:

Name of person signing: Peggy Nichols

Certificate of Facsimile Transmission

I hereby certify that this correspondence is being facsimile transmitted to (703) 305-3014 Attn: Examiner J. Parkin, the Commissioner for Patents, Washington, D.C. 20231, on October 25, 2001.

By: _____

Peggy Nichols

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application for:

Hunein F. MAASSAB et al.

Examiner: J. Parkin

Serial No.: 08/573,569

Group Art Unit: 1648

Filing Date: December 14, 1995

For: COLD-ADAPTED INFLUENZA
VIRUS**REQUEST FOR WITHDRAWAL OF IMPROPER NOTICE OF ABANDONMENT**Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This paper is submitted to respectfully request withdrawal of the Notice of Abandonment issued by the U.S. Patent and Trademark Office on October 10, 2001, in connection with the above-identified application. A copy of the October 10, 2001 Notice is attached.

The Notice indicates that Applicants failed to reply to the Office's letter mailed August 29, 2000, and that a proposed reply was received on February 13, 2001, but it did not constitute a proper reply under 37 C.F.R. § 1.113(a) to the Final Rejection.

Attached hereto is a copy of the reply filed by facsimile on June 25, 2001, including the facsimile confirmation report. In view of the attached, Applicants' undersigned attorney notes that the Notice of Abandonment was erroneously issued. Withdrawal of the Notice of Abandonment and continued examination of the subject application are respectfully requested.

If the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-1189**, referencing billing no. 23980-7033. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Date:

Oct. 25, 2001

By:

Antoinette F. Konski

Antoinette F. Konski

Reg. No. 34,202

McCutchen, Doyle, Brown & Enersen, LLP
Three Embarcadero Center, Suite 1800
San Francisco, CA 94111
Telephone: (650) 849-4950
Facsimile: (650) 849-4800

OCT. 25. 2001 1:15PM

MCCUSHEN DOYLE PA/6508494800

NO. 7241 P. 5/15



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

G

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/073,569	12/14/95	MAASEAB	H

ANTIONETTE F KOSKI
BAKER & MCKENZIE
560 HANSEN WAY
PALO ALTO CA 94304-1018

HM22/1010

EXAMINER

PARKIN, J

ART UNIT

PAPER NUMBER

1648

31

DATE MAILED:

10/10/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

RECEIVED
MDB & E, LLP

OCT 22 2001

Attd. sub

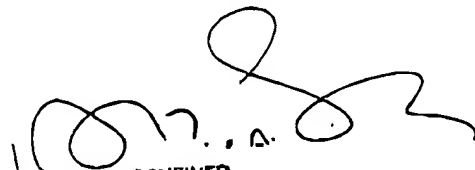
UM 2002.01

Notice of AbandonmentApplication No.
09/573,569Applicant(s)
Massanab et al.Examiner
Jeffrey S. Parkin, Ph.D.Art Unit
1648

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 29 Aug 2000.
- (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
- (b) ☒ A proposed reply was received on 13 Feb 2001, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection.
- (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- (c) ☐ No response has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance.
- (b) ☐ The submitted issue fee of \$ _____ is insufficient. A balance of \$ _____ is due.
- The issue fee required by 37 CFR 1.18 is \$ _____. The publication fee, if required by 37 CFR 1.18(d) is \$ _____.
- (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file new formal drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
- (a) ☐ Proposed new formal drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
- (b) ☐ The proposed new formal drawings filed on _____ are not acceptable and the period for reply has expired.
- (c) ☐ No proposed new formal drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


LAURIE SCHEINER
PRIMARY EXAMINERJEFFREY S. PARKIN, PH.D.
PATENT EXAMINER
ART UNIT 1648

FIRMATION REPORT - MEMORY SEND

Time : JUN-25-01 14:47
 Fax number: .
 Name :

Job : 797
 Date : JUN-25 14:41
 To : 12612#68128019#200201#17033084242#
 Doc. pages : 10
 Start time : JUN-25 14:41
 End time : JUN-25 14:47
 Pages sent : 10
 Job:797

*** SEND SUCCESSFUL ***



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BAKER & MCKENZIE

ATTORNEYS AT LAW

660 HANGEN WAY
 PALO ALTO, CALIFORNIA 94304
 TELEPHONE (650) 856-2400
 FACSIMILE (650) 856-2300

AGENCY DESK

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FACSIMILE TRANSMISSION COVER SHEET

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IF YOU DO NOT RECEIVE 10 PAGE(S) (INCLUDING COVER SHEET)
 PLEASE CALL (650) 856-5533

DATE: June 25, 2001 TIME: 02:19 PM SEND BY: ASAP
 TO: Matthew Kennedy US PTO FAX # 703-308-4242 PHONE # 703-305-5039
 FROM: Michele Todd Wasmuth
 RE: Serial No.: 08/573,569
 CLIENT NUMBER: 68128019-200201

MESSAGE

Dear Matthew:

I am sending you this facsimile on behalf of Antoinette F. Konksi. You had a conversation with her last week regarding the Notice of Improper Request for Continued Examination received on the above-identified application. Attached you will find the following documents:

- 1) A Transmittal Form;
- 2) A Fee Transmittal Form;

20X398v1

BAKER & MCKENZIE

ATTORNEYS AT LAW

860 HANSEN WAY
PALO ALTO, CALIFORNIA 94304
TELEPHONE (650) 856-2400
FACSIMILE (650) 856-9299

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FACSIMILE TRANSMISSION COVER SHEET

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IF YOU DO NOT RECEIVE 10 PAGE(S) (INCLUDING COVER SHEET)
PLEASE CALL (650)856-5533

DATE: June 25, 2001

TIME: 02:19 PM

SEND BY: ASAP

FAX #PHONE #

TO: Matthew Kennedy

US PTO

703-308-4242

703-305-5039

FROM: Michele Todd Wasmuth

RE: Serial No.: 08/573,569

CLIENT NUMBER: 68128019-200201

MESSAGE

Dear Matthew:

I am sending you this facsimile on behalf of Antoinette F. Konski. You had a conversation with her last week regarding the Notice of Improper Request for Continued Examination received on the above-identified application. Attached you will find the following documents:

- 1) A Transmittal Form;
- 2) A Fee Transmittal Form;

response to Notice of Improper Request for Continued Examination and Request for Withdrawal of
and Provisional Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37
C.F.R. 1.137 (b);

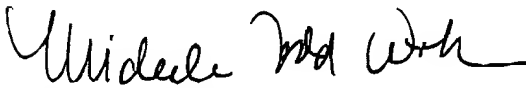
4) Preliminary Amendment; and

5) Copy of your Notice of Improper RCE issued June 1, 2001.

If you have any questions regarding the transmission, feel free to contact me.

Thanks so much for your assistance in this matter.

Respectfully,



Michele Todd Wasmuth

650-856-5533

THIS TRANSMISSION IS INTENDED ONLY FOR THE PARTY TO WHOM IT IS ADDRESSED AND MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION. If you are not the intended recipient, you are hereby notified that any use, dissemination or copying of this transmission is prohibited. If you have received this transmission in error, please notify us immediately by telephone and return this transmission and any copies to us by mail. Thank you.

IN THE UNITED STATES PATENT, AND TRADEMARK OFFICE

TRANSMITTAL
FORM

(to be used for all correspondence after filing)

Total number of Pages in this submission

8

Serial Number	08/573,569
Filing Date	December 14, 1995
First Named Inventor	Hunein F. Maassab
Group Art Unit	1648
Examiner Name	J. Parkin
Attorney Docket No.	128019200201

Commissioner for Patents
Washington, D.C. 20231

ENCLOSURES (check all that apply)

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> FEE TRANSMITTAL FORM (IN DUPL.)
<input type="checkbox"/> FEE ATTACHED | <input type="checkbox"/> ASSIGNMENT PAPERS | <input type="checkbox"/> AFTER ALLOWANCE
COMMUNICATION TO GROUP |
| <input checked="" type="checkbox"/> AMENDMENT/RESPONSE
<input type="checkbox"/> AFTER FINAL
<input type="checkbox"/> AFFIDAVITS' DECLARATION(S) | <input type="checkbox"/> DRAWING(S) | <input type="checkbox"/> APPEAL COMMUNICATION TO BOARD
OF APPEALS AND INTERFERENCES |
| <input type="checkbox"/> EXTENSION OF TIME | <input type="checkbox"/> LICENSING-RELATED
PAPERS | <input type="checkbox"/> APPEAL COMMUNICATION TO GROUP
(APPEAL NOTICE, BRIEF, REPLY BRIEF) |
| <input type="checkbox"/> EXPRESS ABANDONMENT REQUEST | <input type="checkbox"/> PETITION ROUTING SLIP
(PTO/SB/60) AND
ACCOMPANYING
PETITION) | <input type="checkbox"/> PROPRIETARY INFORMATION |
| <input type="checkbox"/> INFORMATION DISCLOSURE
STATEMENT W/1449 | <input type="checkbox"/> TO CONVERT A
PROVISIONAL
APPLICATION | <input type="checkbox"/> STATUS LETTER |
| <input type="checkbox"/> CERTIFIED COPY OF PRIORITY
DOCUMENT(S) | <input type="checkbox"/> POWER OF ATTORNEY,
REVOCATION CHANGE OF
CORRESPONDENCE ADDRESS | <input checked="" type="checkbox"/> ADDITIONAL ENCLOSURE(S)
(PLEASE IDENTIFY BELOW): |
| <input type="checkbox"/> RESPONSE TO MISSING PARTS/
INCOMPLETE APPLICATION
<input type="checkbox"/> RESPONSE TO MISSING PARTS
UNDER 37 CFR 1.52 OR 1.53
COPY OF PTO-1533 | <input type="checkbox"/> TERMINAL DISCLAIMER | RESPONSE TO NOTICE OF IMPROPER REQUEST FOR
CONTINUED EXAMINATION (RCE) AND REQUEST
FOR WITHDRAWAL OF NOTICE AND PROVISIONAL
PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37
CFR 1.137(b); AND COPY OF NOTICE OF IMPROPER
REQUEST FOR CONTINUED EXAMINATION ISSUED BY
PTO ON JUNE 1, 2001. |
| | <input type="checkbox"/> SMALL ENTITY STATEMENT | |
| | <input type="checkbox"/> REQUEST FOR REFUND | |

BAKER & MCKENZIE
660 HANSEN WAY
PALO ALTO, CALIFORNIA 94304
TELEPHONE: (650) 856-2400
FACSIMILE: (650) 856-9299

DATE: JUNE 25, 2001

BY: 

MICHELE TODD WASMUTH, REG. NO. 43,239

CERTIFICATE OF TRANSMISSION BY FACSIMILE

I hereby certify that this correspondence is being transmitted by facsimile (703-308-4242) to: Commissioner for Patents, Washington, D.C. 20231 on this date:
June 25, 2001.By: 

Name of person signing: Peggy Nichols

FEE TRANSMITTAL FOR FY 2001

Patent fees are subject to annual revision.

Complete if Known

Application Number	08/573,589
Filing Date	December 14, 1995
First Named Inventor	Munein F. Maassab
Examiner Name	J. Parkin
Group Art Unit	1648
Attorney Docket No.	128019200201

TOTAL AMOUNT OF PAYMENT

(\$1240.00)

METHOD OF PAYMENT

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number: 50-0974
Deposit Account Name: Baker & McKenzie

- ☒ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17
☐ Applicant claims small entity status. See 37 CFR 1.27

2. ☐ Payment Enclosed:

☐ Check ☐ Credit Card ☐ Money Order ☐ Other

FEE CALCULATION

1. BASIC FILING FEE

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
101	710	201	355	Utility filing fee	
106	320	206	160	Design filing fee	
107	490	207	245	Plant filing fee	
109	710	209	355	Reissue filing fee	
114	150	214	75	Provisional filing fee	

SUBTOTAL (1) (\$00)

2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee from below	Fee Paid
20**	*	x	\$
Independent Claims	3**	*	x
Multiple Dependent			\$

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description
103	18	203	9	Claims in excess of 20
102	80	202	40	Independent claims in excess of 3
104	270	204	135	Multiple dependent claims, if not paid
108	80	208	40	**Reissue independent claims over original patent
110	18	210	9	**Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$00)

** or number previously paid, if greater; For reissues, see above.

FEE CALCULATION (continued)

3. ADDITIONAL FEESy

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for <i>ex parte</i> reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
118	380	218	195	Extension for reply within second month	
117	890	217	445	Extension for reply within third month	
118	1,390	218	695	Extension for reply within fourth month	
128	1,890	228	945	Extension for reply within fifth month	
119	310	219	155	Notice of Appeal	
120	310	220	155	Filing a brief in support of an appeal	
121	270	221	135	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,240	241	620	Petition to revive - unintentional	1,240.00
142	1,240	242	620	Utility issue fee (or reissue)	
143	440	243	220	Design issue fee	
144	800	244	300	Plant issue fee	
122	130	122	130	Petitions of the Commissioner	
123	50	123	50	Petitions related to provisional applications	
125	180	125	180	Submission of Information Disclosure Sheet	
581	40	581	40	Recording each patent assignment per properties (times number of properties)	
146	710	246	355	Filing a submission after final rejection (37 CFR § 1.128(a))	
149	710	249	355	For each additional invention to be examined (37 CFR § 1.128(b))	
179	710	279	355	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$1,240.00)

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Michele Todd Wasmuth	Registration No. (Attorney/Agent)	43,239	Telephone	(650) 856-5533
Signature		Date	June 25, 2001		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

208268v1